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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 587

JULIE JOHNSON,

Petitioner,

vs.

CLIFFORD E. HALPIN, Acting Director of the Department of Revenue of the State of Illinois, and IVAN A. ELLIOTT, Attorney General of Illinois,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT.

ARGUMENT.

I.

The Illinois Supreme Court's holding that the tax in question is a "use tax" valid under the Constitution of Illinois is conclusive here. Once it is recognized that the tax in question is a "use tax" it must be sustained under decisions of this Court that are directly in point.

Petitioner's attack upon the validity of the tax in question is premised upon her assertion that the Constitution of Illinois does not permit "use taxes". But the Illinois Su-

preme Court held the contrary in the instant case. The Court said in its opinion in this case, *Johnson* v. *Halpin*, 413 Ill. 257, at page 262:

> "The fact that the State has never had any type of use tax or that an administrative study group may have expressed doubt as to the practicability or constitutionality of a general use tax in Illinois, as pointed out by plaintiff, does not constitute legal grounds for invalidating a statute."

The Illinois Supreme Court, having sustained the tax as valid under the Illinois Constitution, correctly perceived that it is precisely the kind of use tax that was sustained by this Court in *Nelson* v. *Sears-Roebuck & Company*, 312 U. S. 359, so far as any Federal question is concerned. In that case Iowa imposed a "use tax" upon Iowa residents with respect to property used in Iowa although imported from other states as complementing, supplementing and implementing a cognate State "sales tax".

The Illinois Supreme Court said in the opinion in the instant case (413 Ill. 257) at pages 263-4:

> "An examination of the authorities reveals, contrary to plaintiff's assertion, that the overwhelming judicial opinion among the State and Federal courts is that a tax on the use, storage or consumption of a product within the State does not impose an unconstitutional burden on interstate commerce. (129 A. L. R. 221, and cases cited.) Moreover, the Supreme Court of the United States has unequivocally determined this issue in *Nelson* v. *Sears Roebuck & Co.*, 312 U. S. 359, where Sears Roebuck, as the distributor and collecting agent for the Iowa use tax, contested its validity as applied to merchandise shipped into and used in the State. The court stated: 'The validity of such a tax so far as the purchaser is concerned has been withdrawn from the arena of debate. (Citation.) * * * Use in Iowa is what is taxed regardless of the time and place of passing title, and regardless of the time the tax is required to be paid.'

"Plaintiff endeavors to distinguish this case on the ground that the Iowa constitution permits a use tax; that the *Norton* case overruled it; that the statute is not the same as that involved herein; that the uniformity issue was not raised in the *Nelson* case; and that Sears Roebuck had retail stores in Iowa, whereas plaintiff is merely an individual purchaser.

"It is patent that these distinctions are without merit. The provision of the Iowa constitution authorizing use taxes does not affect the issue of whether the tax violates the Federal commerce clause; as hereinbefore noted, the *Norton* case did not overrule the *Nelson* case, but expressly distinguished use tax cases; although the details of the Iowa statute and the Illinois Cigarette Use Tax Act may vary, in so far as the commerce clause is concerned, they both tax the local use of products shipped from outside the State; the uniformity issue, in so far as it affects interstate commerce, was involved in the *Nelson* case, and the court stated that since sales made wholly within Iowa carried the same burden as mail-order sales, there was no discrimination against interstate commerce; and finally the fact that Sears Roebuck had retail stores in Iowa affected only its liability as a tax collecting agency.

"Inasmuch as the Illinois cigarette use tax is a tax on the local use of cigarettes, and in no way discriminates against purchasers who buy their cigarettes outside the State, since they pay the same tax as purchasers from Illinois distributors, the act in no way contravenes the commerce clause of the Federal Constitution."

We adopt the above quoted language of the Supreme Court of Illinois in the instant opinion as statement of our grounds for resisting petitioner's application for *certiorari*.

II.

No question of the law of search and seizure is presented.

While the Illinois Supreme Court did observe *passim* that "provisions requiring the keeping of records or furnishing information for tax assessing and tax collecting bodies are not within the constitutional prohibition" against unreasonable searches and seizures, this was a mere *dictum*.

The Court's actual holding was embodied in its utterance at page 273 of its opinion:

> "Furthermore, since plaintiff is not a distributor and would not be affected by this provision of the Cigarette Use Tax Act, she is not entitled to raise that issue in this case. *Liberty Natl. Bank* v. *Collins*, 388 Ill 549."

Petitioner is not subjected to any of the provisions for inspection of dealers' books, and is not entitled to raise any question of the constitutionality of the inspection provisions of the instant taxing act.

Conclusion.

No substantial Federal question is presented. The writ of *certiorari* should be denied.

Respectfully submitted,

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